

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

Ralph C. McCullough, II, as Plan
Trustee for HomeGold Financial, Inc.,
HomeGold, Inc., and Carolina
Investors, Inc.,

Plaintiff,

v.

Brendan Carpenter,

Defendant.

C/A No. 7:05-882-GRA

ORDER
(Written Opinion)


This matter is before the Court on Defendant's Motion to Dismiss six of the Plaintiff's nine causes of action. Defendant argues that the six claims in issue, breach of fiduciary duty, unjust enrichment, larceny by trick, conspiracy, fraudulent conveyance without consideration, and preferential transfer, are subject to dismissal on the pleadings under Federal Rule of Civil Procedure 12(b)(6) (failure to state a claim). For the reasons stated below, Defendant's Motion to Dismiss is DENIED.

Dismissal of a complaint for failure to state a claim under FRCP 12(b)(6) is warranted only if "it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *Mylan Labs., Inc. v. Matkari*, 7 F.3d 1130, 1134 (4th Cir. 1993). "In considering a motion to dismiss, the [district] court should accept as true all well-pleaded allegations and view the complaint in the light most

favorable to the plaintiff." *Mylan*, 7 F.3d at 1134. This Court, after a careful review of the pleadings, upon hearing oral argument of the motion, and in consideration of *Mylan's* instruction, finds that the Plaintiff has carried its burden under *Conley*.

IT IS THEREFORE ORDERED that Defendant's Motion to Dismiss is DENIED.

IT IS SO ORDERED.



G. ROSS ANDERSON, JR.
UNITED STATES DISTRICT JUDGE

Anderson, South Carolina
May 31, 2005